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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,960	08/18/2003	Patrick A. Hawkins	558.008US1	4188
21186	7590	09/28/2006	EXAMINER	
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402			EPPS, TODD MICHAEL	
			ART UNIT	PAPER NUMBER
			3632	

DATE MAILED: 09/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/642,960	<b>Applicant(s)</b> HAWKINS, PATRICK A.	
	<b>Examiner</b> Todd M. Epps	<b>Art Unit</b> 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 July 2006.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 and 29-34 is/are pending in the application.
- 4a) Of the above claim(s) 1-5 and 22-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6-21 and 29-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/2/04</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

This is the first Office Action for serial number 10/642,960, Mounting Device, filed on August 18, 2003.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 6-21, and 29-34 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-17 of U.S. Patent No. 6,679,461 to Hawkins. Although the conflicting claims are not identical, they are not patentably distinct from each other because the prior arts listed above have all the elements shown in the applicant's claims.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a) because they fail to show at least one elongate coupling member being coupled to the plate structure as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 21 is rejected because it is not fully understood how a support structure has the means for elevating with respect to claim 14.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6, 7, 9, 11, 12, 13, 14, 15, 16, 18, 19, 29, 30, 31, 32, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,855,342 to Hawkins et al. (Hawkins) in view of U.S. Patent No. 7,102,089 to Burgess et al. (Burgess).

Hawkins '342 discloses a support device adapted to support structures, the support device (fig. 1) comprising: a support structure (10), wherein the support structure having a top surface, a bottom surface, and side surfaces, and the bottom

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surface for resting on a surface, and has a recess therein; wherein the support structure comprises a pliable form material (col. 3, lines 20-33); and at least one elongate coupling member (50).

However, Hawkins '342 fails to teach a plate structure, wherein at least a portion of the plate structure disposed on the top surface and coupled with the support structure. Nevertheless, Burgess '089 discloses a plate structure (145a), wherein at least portion of the plate structure disposed on the top surface and disposed within the recess; wherein the plate structure is a substantially rigid plate structure, and formed of metal; and further comprising a fastener that fasten the plate structure with the support structure. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included the support device of Hawkins '342 with a plate structure as taught by Burgess '089 wherein doing so would provide thereof for a better design consideration.

In regard to claims 12, and 15, Hawkins '342 in view of Burgess '089 fails to teach an elongate strut formed by surfaces of the plate structure. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified a strut of Hawkins '342 with the plate as taught by Burgess '089 to formed by surfaces of the plate into one piece to save manufacturing costs.

In regard to claims 13, and 30, Hawkins '342 in view of Burgess '089 teach wherein the plate structure covers a portion of the top surface but fails to teach wherein the plate structure covers at least a portion of the side surface of the support structure. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the

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invention was made to modified the plate to cover at least a portion of the side surface of the support structure to provide more stable and to restrict the movement of the plate.

Claims 20, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hawkins '342 in view of Burgess '089, and in further view of U.S. Patent No. 6,888,977 to Wong et al (Wong).

Hawkins '342 in view of Burgess '089 fails to teach wherein the fastener includes adhesive. Nevertheless, Wong '977 discloses a support plate with adhesives underneath as a fastener, and disposed between the support plate and the support structure. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to included the support structure and plate of Hawkins '342 in view of Burgess '089 with the adhesive as taught by Wong '977 wherein doing so would provide thereof for additional strength to hold the plate down.

Claims 8, 10, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hawkins '342 in view of Burgess '089, and in further view of U.S. Patent No. 5,942,347 to Koncar et al. (Koncar).

Hawkins '342 in view of Burgess '089 fails to disclose wherein the plate structure is formed of plastic and HDPE. Attention is directed to Koncar '347, which teaches a plate made of plastic or HDPE. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included the support

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device of Hawkins '342 with a plate structure as taught by Burgess '089 and further in view of Koncar '347 with a plate made of plastic or HDPE wherein doing so would provide thereof for stronger support to last longer and a cheaper cost for a manufacturing purpose.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 3,968,323 to Blanchet

U.S. Patent No. 2,909,054 to Phillips

U.S. Patent No. 4,542,871 to Fortsch

U.S. Patent No. 4,708,554 to Howard

U.S. Patent No. 6,325,352 to Story

The above references disclose a structure similar to the applicant's invention.

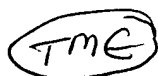
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd M. Epps whose telephone number is 571-272-8282. The examiner can normally be reached on M-F (7:30-4:30).



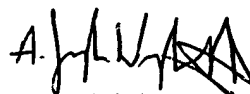
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Todd M. Epps  
Patent Examiner  
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September 20, 2006



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